

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Yost	Team: Team # 2	CCRB Case #: 200716885	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/17/2007 3:25 PM	Location of Incident: Irving Avenue and Putnam Avenue	Precinct: 83	18 Mo. SOL 5/17/2009	EO SOL 5/17/2009	
Date/Time CV Reported Tue, 11/20/2007 4:10 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/20/2007 4:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Harvey	01830	930325	083 PCT
2. SGT Zoilo Encarnacion	01101	921317	083 PCT
3. POM William Falcone	17540	938455	083 PCT
4. POM Javier Velez	24737	935924	083 PCT
5. An officer			

Officer(s)	Allegation	Investigator Recommendation
A.SGT Zoilo Encarnacion	Abuse: Sergeant Zoilo Encarnacion authorized the stop of § 87(2)(b)	
B.POM Michael Harvey	Force: Officer Michael Harvey pointed his gun at § 87(2)(b)	
C.POM Michael Harvey	Discourtesy: Officer Michael Harvey spoke obscenely and/or rudely to § 87(2)(b)	
D.POM Michael Harvey	Abuse: Officer Michael Harvey threatened § 87(2)(b) with the use of force.	
E.POM Michael Harvey	Force: Officer Michael Harvey used physical force against § 87(2)(b)	
F.POM Michael Harvey	Off. Language: Officer Michael Harvey made remarks to § 87(2)(b) based upon sexual orientation.	
G.POM Javier Velez	Discourtesy: Officer Javier Velez spoke obscenely and/or rudely to § 87(2)(b)	
H.POM William Falcone	Discourtesy: Officer William Falcone spoke obscenely and/or rudely to § 87(2)(b)	
I.SGT Zoilo Encarnacion	Discourtesy: Sergeant Zoilo Encarnacion spoke obscenely and/or rudely to § 87(2)(b)	
J.SGT Zoilo Encarnacion	Force: Sergeant Zoilo Encarnacion pointed his gun at § 87(2)(b)	
K.SGT Zoilo Encarnacion	Abuse: Sergeant Zoilo Encarnacion threatened § 87(2)(b) with the use of force.	
L.POM Michael Harvey	Abuse: Officer Michael Harvey strip-searched § 87(2)(b)	
M. An officer	Abuse: An officer strip-searched § 87(2)(b)	

Synopsis

On November 17, 2007, at approximately 3:13 PM, an anonymous 911 caller reported that a Hispanic male with a gun, wearing a red-and-black/red-and-grey sweatshirt was on Cornelia Street between Irving and Knickerbocker Avenues in Brooklyn. At approximately 3:25 PM, § 87(2)(b) a § 87(2)(b) Hispanic male wearing a red hooded sweatshirt with gray patterns on it, was walking east on Irving Avenue toward Putnam Avenue, one block west of Cornelia Street. An unmarked car containing plainclothes members of the 83rd Precinct Anti-Crime team – Sergeant Zolio Encarnacion, Officer Michael Harvey, Officer Javier Velez, and Officer William Falcone – stopped § 87(2)(b) (**allegation A**). § 87(2)(b) fled down the street, and the officers pursued him, both on foot and by vehicle. § 87(2)(b) stated that Officer Harvey pursued him on foot, with his gun pointed at § 87(2)(b) yelling, “Stop, you mother fucker, before I fucking shoot you” (**allegations B, C, and D**). Officer Harvey eventually caught up to § 87(2)(b) tackled him, pushed his head into the cement causing scrapes to § 87(2)(b)’s face, and continued to curse at him (**allegations E and C**). § 87(2)(b) was then handcuffed and escorted to the patrol car, where Officer Harvey struck him in the face while placing him in the back seat (**also encompassed in allegation E**). § 87(2)(b) sat in the backseat of the car, towards the middle. All four officers entered the surrounding seats and began aggressively questioning § 87(2)(b) about the whereabouts of the gun. During the questioning, the officers called § 87(2)(b) such things as “little shit,” “little bitch,” “little pussy,” “motherfucker,” and “fucking faggot” (**allegations C, F, G, H, and I**). Also during this time, Sergeant Encarnacion placed and pointed his firearm against § 87(2)(b)’s groin and stated in sum, “Where’s the gun, motherfucker? You want kids? I’ll fucking blow your balls off” (**allegations I, J and K**). PO Harvey also threatened to “bust” § 87(2)(b)’s “two front teeth” (**also encompassed in allegation D**). § 87(2)(b) denied having any gun, and the officers’ canvass of the area was negative. The officers then transported § 87(2)(b) to the 83rd Precinct. § 87(2)(b) stated that he was strip-searched at the precinct by Officer Harvey and one of the other officer (**allegations L and M**). It was later determined that § 87(2)(b) was in fact not the suspect, and § 87(2)(b) was ultimately charged with § 87(2)(b).

§ 87(2)(g)

§ 87(2)(b) alleged that officers approached him with their weapons drawn. The officers could not recall if they had their weapons drawn when they approached § 87(2)(b) § 87(2)(g)

Officer Harvey resigned from service on January 20, 2008, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

This complaint was filed by § 87(2)(b) on behalf of his son, § 87(2)(b) a § 87(2)(b) 5'8", 140lb Hispanic male (Encl. 9a-b). § 87(2)(b) did not witness the incident, so his statement is not summarized. § 87(2)(b) did, however, provide the name Officer "James Brunache" when he filed the complaint but was not clear as to how Officer Brunache was involved in the incident. § 87(2)(b) was interviewed at the CCRB on December 8, 2007 (Encl. 10a-i). § 87(2)(b) will be referred to as § 87(2)(b) throughout this report). § 87(2)(b) provided a follow-up phone statement on December 19, 2007 (Encl. 12). His statements are consistent and are summarized below.

§ 87(2)(b) (Victim)

At some time between 3:00pm and 3:30pm on November 17, 2007, § 87(2)(b) he was taking the M train to his friend's house on Putnam Avenue, two to three doors south of Irving Avenue. The M train was not running and had been replaced by a shuttle bus. § 87(2)(b) exited the shuttle bus at the corner of Myrtle Avenue and Wyckoff Avenue. § 87(2)(b) walked east along Wyckoff Avenue, then south through a parking lot midway down the block. Reaching Ridgewood Place on the other side of the parking lot, he continued south on Madison Street (a short block) until it intersected a school yard at Irving Avenue. He turned left at Irving Avenue and continued toward Putnam Avenue, where he was to make a right to reach his friend's house.

§ 87(2)(b) was wearing a hooded sweatshirt that was red with grey "highlights," black-and-white sneakers, and black Lot 29 jeans. He was not wearing the hood of the sweatshirt, nor was he wearing a hat. He did not have a bag. Given that it was cold outside, § 87(2)(b) was walking at a fairly quick pace and had his hands in his pockets. § 87(2)(b) did not observe any other people in the vicinity at that time.

Just as § 87(2)(b) turned left at the corner of what he believed to be Irving Avenue and Putnam Avenue, an unmarked white four-door sedan, heading in the same direction he was walking, drove up next to him and stopped. As soon as the car stopped, four individuals dressed in street clothes, determined through investigation to be Sergeant Zolio Encarnacion, Officer Michael Harvey, Officer Javier Velez, and Officer William Falcone of the 83rd Precinct Anti-Crime team, exited simultaneously. Sergeant Encarnacion exited the driver's seat; Officer Harvey exited the rear passenger side; § 87(2)(b) could not be certain from which seat Officer Falcone or Officer Velez exited. § 87(2)(b) observed handguns on the individuals as they exited; to § 87(2)(b)'s recollection, each individual had a gun in his hand, at his side. Officer Harvey gestured to § 87(2)(b) to come over, but did not say anything, to § 87(2)(b)'s recollection.

Seeing the guns but no other indicators of who these individuals were, § 87(2)(b) panicked, thinking that he was about to be kidnapped, and ran in the direction of his friend's house – in the same direction he had been walking, taking a right turn at Putnam Avenue. As § 87(2)(b) ran, he heard the car being reentered and proceeding to drive after him. The car passed § 87(2)(b) at one point and drove partway into a driveway directly ahead of him in an attempt to cut him off, but § 87(2)(b) was able to continue around the front of the car because it was not fully blocking the sidewalk. As § 87(2)(b) ran, he was looking for people to help him and screaming, "Oh my God!" and, "Help!" There were no other people in the vicinity. At one point, he looked behind him and observed Officer Harvey running after him. Officer Harvey had his gun drawn and pointed in § 87(2)(b)'s direction as he ran. Officer Harvey was shouting such things as, "Stop, you motherfucker, before I fucking shoot you!" Partway down the block, § 87(2)(b) stopped briefly in front of his friend's house, but upon observing that the door was closed, § 87(2)(b) continued to run. § 87(2)(b) observed a group of people down the street ahead of him, and ran toward them in the hope that he would be able to get their attention. At the same time, § 87(2)(b) began to slow down because he was afraid of being shot.

Officer Harvey finally caught up to § 87(2)(b) a little further along the same block. Officer Harvey said, "You little shit," grabbed § 87(2)(b) from behind, and tackled him to the ground, causing § 87(2)(b) to fall forward and slightly onto his right side. § 87(2)(b) stated that he was panicking, and had begun to cry a little. He was screaming, "Oh my God!" Officer Harvey told him to "shut the fuck up." § 87(2)(b) lifted his head off the ground and turned to the left in an attempt to see what was happening. He was also holding his left hand onto the bottom of a metal residential gate next to which he was lying. Officer Harvey said, "Let go of the gate, let go of the gate." Officer Harvey then put a forearm against the back of § 87(2)(b)'s neck and pushed the

right side of § 87(2)(b)'s head onto the cement, saying, "Put your fucking head down." This action caused scrapes to § 87(2)(b)'s right cheek and jaw-line and to the inside of § 87(2)(b)'s right ear. § 87(2)(b) then felt his arms being pulled behind his back and handcuffs being placed on his wrists. Officer Harvey lifted § 87(2)(b) to his feet, escorted him to the rear passenger-side of the car, which was now located in the street, facing the same direction § 87(2)(b) was running. None of the officers was in the car at that point; they were all standing outside the car.

Officer Harvey told § 87(2)(b) to get in the backseat. § 87(2)(b) sat at an angle with his legs still sticking out of the door. § 87(2)(b) was hesitant to enter the car fully, as he was still uncertain of who these individuals were and what they were going to do with him. Officer Harvey then told § 87(2)(b) to "get the fuck in the car," and struck § 87(2)(b) on the right side of § 87(2)(b)'s face, on the cheek and jaw. The strike was done with the bottom/blade (as opposed to the knuckles) of Officer Harvey's closed fist. Officer Harvey gestured to strike again and § 87(2)(b) moved his legs into the car. Officer Harvey entered the car through the same (rear passenger) side and began calling § 87(2)(b) names such as, "little shit," and "mother fucker." The backseat of the car was a continuous bench. Officer Harvey grabbed the back of § 87(2)(b)'s hair and pushed § 87(2)(b) over to the left, shoving § 87(2)(b)'s head into the rear driver-side area of the seat. As he did this, Officer Harvey was cursing at § 87(2)(b) and making statements such as, "Keep fucking with me, you little shit," and "Stop playing." Officer Harvey let go of § 87(2)(b)'s hair, and § 87(2)(b) sat upright again. The other three officers entered the car at that point—Sergeant Encarnacion into the driver's seat, Officer Falcone and Officer Velez into the front passenger-side and rear driver-side. § 87(2)(b) stated that all four turned to look at § 87(2)(b) and began yelling and cursing at § 87(2)(b) calling him an "asshole," a "little pussy," a "little bitch," and a "fucking faggot." § 87(2)(b) could not specify which individual said what, or how many times each was said, but stated that all four were shouting things to this effect, Officer Harvey being the most vocal; § 87(2)(b) stated that Officer Harvey called him a "fucking faggot."

At that point, the officers asked § 87(2)(b) "Where's the gun? Where the fuck is the gun?" § 87(2)(b) replied that he did not have a gun and did not know what they were talking about. Officer Harvey told him to "shut the fuck up" again, and said, "You know where the gun is at... You fucking liar." § 87(2)(b) again told the individuals that he did not know what they were talking about, and explained that he had just come from the bus. Sergeant Encarnacion then pulled a handgun and stuck it between § 87(2)(b)'s legs, so that the barrel of the gun was touching § 87(2)(b)'s groin. Sergeant Encarnacion stated, "Where's the gun, motherfucker? You want kids? I'll fucking blow your balls off." Sergeant Encarnacion turned to the right to face § 87(2)(b) from the driver-seat. § 87(2)(b) was not sure, but believed that Sergeant Encarnacion had the gun in his right hand when he pulled it out and placed it against § 87(2)(b)'s groin. § 87(2)(b) was "hysterical," "freaking out," and crying. He yelled, "I don't have a gun. I don't have no gun [sic]. I'm telling the truth!" Sergeant Encarnacion said, "Alright," and put away the gun. However, the officers continued to yell at § 87(2)(b). § 87(2)(b) told them that he did not know who they were. They responded, "You knew who we were." Officer Harvey then grabbed § 87(2)(b) again by the back of the hair and pulled § 87(2)(b)'s head back so that § 87(2)(b) was looking directly at Officer Harvey. Officer Harvey said, "This is me, motherfucker! Keep fucking playing with me! I swear to God, I'll take you to the Precinct and I'll bust your two front teeth in your mouth." § 87(2)(b) fell silent.

Sergeant Encarnacion drove the car around the block, returning to Irving Avenue between Madison Street and Putnam Avenue, where the initial stop had occurred. Officer Harvey, Sergeant Encarnacion, and Officer Falcone all exited the car and searched the area for the alleged weapon, while PO Velez remained in the car with § 87(2)(b). As Officer Harvey, Sergeant Encarnacion, and Officer Velez looked around the area, § 87(2)(b) looked out of the window and observed some kind of band on the right side of Officer Harvey's neckline that read, "NYPD." § 87(2)(b) also observed a police radio on one of the individuals at that time. This was the first time that § 87(2)(b) was fully aware that Officer Harvey, Sergeant Encarnacion, Officer Falcone, and Officer Velez were officers. Prior to that point, § 87(2)(b) had not seen any shields displayed, and the officers had not up to that point identified themselves. § 87(2)(b) also stated that the white car did not have its emergency lights on at any point. § 87(2)(b) began to relax at the realization that the individuals were officers.

After searching the area, Officer Harvey, Sergeant Encarnacion, and Officer Falcone reentered the car and Officer Harvey asked § 87(2)(b) how old he was. § 87(2)(b) told Officer Harvey that he was § 87(2)(b) and Officer Harvey responded, "§ 87(2)(b) Oh, you're going straight to Rikers. You're going straight to fucking Rikers." Sergeant Encarnacion then stated, "No, no, no. He goes to Central Booking." Officer Harvey continued to make statements to § 87(2)(b) such as, "You know where that gun is," and "You're such a bad fucking liar."

Sergeant Encarnacion began driving. En route, the handcuffs were hurting § 87(2)(b) due to how tightly they were fastened and the uncomfortable position in which his hands were behind him as he sat. § 87(2)(b) was breathing deeply and asked the officers if they could loosen the handcuffs. One of the officers § 87(2)(b) was not sure who) told him to “shut the fuck up.” The car stopped in front of the 83rd Precinct stationhouse and the officers brought § 87(2)(b) inside.

At the front desk of the stationhouse, Officer Harvey asked § 87(2)(b) for his information. Officer Harvey asked § 87(2)(b) if he had anyone to call, and § 87(2)(b) stated that he did not – his mother does not have a cell phone, and the home number has recently changed and § 87(2)(b) did not know it. To § 87(2)(b)'s statement that he did not know his home number, Officer Harvey responded, “What are you, special ed or something?” Officer Harvey asked § 87(2)(b) if there was anyone else he could call. § 87(2)(b) stated that he could call his grandmother, but when Officer Harvey asked what his grandmother's name was, § 87(2)(b) stated that he did not know § 87(2)(b) stated that he knew her only as “§ 87(2)(b) but her real name, he has since confirmed, is § 87(2)(b). Officer Harvey sighed and asked § 87(2)(b) how he could not know his own grandmother's name. Officer Harvey searched § 87(2)(b)'s sweatshirt and pants pockets, taking out § 87(2)(b)'s school ID. Nothing was recovered from the search. Officer Harvey then said something to the effect of, “Take him over here,” and § 87(2)(b) was led inside a private cell with a toilet in it, from which no other prisoners or people in the stationhouse could be seen. Officer Harvey and one of the other officers – either Officer Falcone or Officer Velez – also entered the cell. The officers instructed § 87(2)(b) to remove his shirt, then his undershirt, then his pants, then his sneakers, then the shoelaces out of the sneakers, then his socks, then his underwear. § 87(2)(b) performed each step, as instructed. The officers then told § 87(2)(b) to lift his testicles, then to bend over and spread the cheeks of his buttocks. The officers never physically touched § 87(2)(b) during the search. When still nothing was recovered, § 87(2)(b) was allowed to dress himself again.

§ 87(2)(b) was then placed into a holding cell. There were no other prisoners in the cell. § 87(2)(b) then asked if he could make a call because his parents were probably worried about him. Officer Harvey told him that he could not make any calls, and stated that the officers would call his family later that night, or at Central Booking. A few hours later, Officer Harvey came into the holding cell and told § 87(2)(b) “You’re a little fucking liar. You’re trying to say you didn’t have a gun?” Officer Harvey told § 87(2)(b) he had “two pieces of paper” that indicated that two different people had called stating that there was a male Hispanic wearing a red-and-grey sweater, across the street from a school, who had a gun. Officer Harvey told § 87(2)(b) “You fit the description perfectly.” Officer Harvey offered to show § 87(2)(b) the printout. Officer Harvey led § 87(2)(b) to an upstairs area, where § 87(2)(b) read the printout, which stated what Officer Harvey had claimed. Officer Harvey then led § 87(2)(b) back to the cell and when he placed him back inside, Officer Harvey called § 87(2)(b) a “liar” again and then made some comment to the effect of, “And that’s why we found a gun.” Officer Harvey then left.

§ 87(2)(b) started to panic again, worrying about what Officer Harvey had meant. He was left alone again for a number of hours, and began to cry again and hang his head in his hands. Eventually, Officer Harvey came back to the cell and told § 87(2)(b) not to worry and that he did not have to cry. Officer Harvey explained that the officers did not find anything, and that all the charges should be dropped. Officer Harvey told § 87(2)(b) that he was “just” going to get his fingerprints and picture, and § 87(2)(b) would then go straight to Central Booking, and should be released the next morning, without going to Rikers or anywhere else, and without having anything on his record. Officer Harvey then processed § 87(2)(b) – scanning his fingerprints and taking his pictures – and returned § 87(2)(b) to the cell. Officer Harvey told § 87(2)(b) “You know, you need to understand from our point of view, we thought you had a gun...you came out, you just started running.” § 87(2)(b) told Officer Harvey that he understood, but thought to himself that he did not see why the officers would not have released him when they realized he did not have anything on him. § 87(2)(b) was taken to Central Booking at approximately 8:00 PM by different officers (determined through investigation as Officer James Brunache and Officer Vernon Truitt). He went before a judge and was released due to lack of evidence.

In addition to the scrapes on § 87(2)(b)'s face, § 87(2)(b)'s knee and neck were also hurt, though not visibly so. On the § 87(2)(b)'s knee still hurt when he bent it. He was taken by his father, § 87(2)(b) to a hospital, possibly located in § 87(2)(b). § 87(2)(b) did not know the name of the hospital or where exactly it was located. The doctors took X-rays and prescribed § 87(2)(b) some kind of medication.

§ 87(2)(b) stated that he only got a good look at the officer identified as Officer Harvey and would not likely recognize the other officers from photos. § 87(2)(b) described Sergeant Encarnacion as the only black officer

in the group, but could not describe Sergeant Encarnacion in more detail because his attention was focused more on Sergeant Encarnacion's gun than Sergeant Encarnacion's face. § 87(2)(b) described Sergeant Encarnacion's gun as a "regular" grey or silver handgun that was not a revolver. § 87(2)(b) could not recall anything specific about the gun Officer Harvey or the other officers had, but stated that they too looked like regular handguns.

Results of Investigation

Photo Arrays

On December 8, 2007, § 87(2)(b) viewed the following two sets of officer photos at the CCRB (Encl. 13a-k).

The first array was composed of black male officers as follows. #1: Filler; #2: Filler; #3: Filler; #4: Filler; #5: Officer James Brunache; #6: Filler. § 87(2)(b) did not recognize any of the officers.

The second array was composed of white male officer as follows. #1: Filler; #2: Filler; #3: Officer Michael Harvey; #4: Filler; #5: Filler; #6: Filler. § 87(2)(b) was at first uncertain about the officer in photo #3 (Officer Harvey), stating that he "might" recognize #3 as the officer identified as Officer Harvey. Upon further reflection, § 87(2)(b) stated more confidently that #3 was in fact Officer Harvey. He did not recognize the other officers.

On March 11, 2008, § 87(2)(b) viewed additional set of officer photos at the CCRB (Encl. 13a-k). The set was composed of the following. #1: Filler; #2: Filler; #3: Officer Truitt; #4: Officer Ryan Johnson; #5: Sergeant Daniel Ziegler; #6: Filler; #7: Sergeant Encarnacion; #8: Officer Velez; #9: Officer Falcone; #10: Filler.

The only photo § 87(2)(b) positively identified was #3 (Officer Truitt), which he recognized as the officer who drove him to Central Booking. He stated that this officer was not involved in the incident, and § 87(2)(b) did not see this officer prior to being transported to Central Booking.

§ 87(2)(b) stated that the officers in photos #8 (Officer Velez) and #5 (Sergeant Ziegler) might have been the other two white officers from the car, but he could not explain why they seemed familiar, nor could he specify which photo correlated to which officer. He wrote "maybe" on both photos.

§ 87(2)(b) wrote "most likely" on #10 (Officer Lowez Walker of the 71st Precinct; filler), meaning that of the photos of "black" officers (apart from Officer Truitt) – into which category he lumped photos #1 (filler), #7 (Sergeant Encarnacion), and #10 – #10 looked the most similar to the black officer in the driver's seat from the incident. § 87(2)(b) explained that he did not recognize the officer in photo #10, but that #10's facial structure looked like that officer – specifically, his face is thinner and his head is narrower than the other 2 photos, which is how § 87(2)(b) recalled the black officer to look. § 87(2)(b) stated that #7's (Sergeant Encarnacion's) face was too round in the photo, and § 87(2)(b) did not recognize the officer in #1 (filler) at all. § 87(2)(b) again stated that he did not remember the black officer's appearance clearly enough to recognize him from a photo.

Fieldwork

On December 21, 2007, the undersigned investigator conducted fieldwork on Irving and Putnam Avenues (Encl. 14). Photos were taken of the intersection of Irving Avenue and Putnam Avenue, the houses along Irving Avenue in front of which § 87(2)(b) indicated he was first approached by the officers, and the houses on Putnam Avenue in front of which § 87(2)(b) indicated he was eventually tackled to the ground and placed in the unmarked car. The schoolyard has a large chain-link fence around it and is mostly blocked-off from the street.

A canvass letter was left on the fence or in the mailbox of each of the following houses along Irving Avenue in front of the school: § 87(2)(b) – all private residences. A canvass letter was also

left on the doors of the following houses along Putnam Avenue: § 87(2)(b) all 3-story row-house-style apartment buildings. To date, no witnesses have contacted the undersigned.

Identification of Officers Interviewed

Officer Harvey was identified from the stop, question and frisk report, complaint report, and arrest report he prepared for the incident. The rest of the officers – Sergeant Encarnacion, Officer Velez, and Officer Falcone – were identified from the roll call and acknowledged their involvement in the incident.

Officer Statements

Sergeant Zolio Encarnacion

Sergeant Zolio Encarnacion is a § 87(2)(b)-old, 5'10", 200lb dark-skinned Hispanic male. He was interviewed at the CCRB on February 26, 2008 (Encl. 15a-e). Sergeant Encarnacion is now assigned to Brooklyn North Anti-Crime; but on November 17, 2007, Sergeant Encarnacion was the supervisor for the 83rd Precinct Anti-Crime Team. He worked from 9:26 AM until 6:10 PM. The team was composed of Officer Harvey, Officer Velez, and Officer Falcone. Sergeant Encarnacion and his team members were in street attire and assigned to an unmarked patrol car (he could not recall the model). Sergeant Encarnacion was seated in the front passenger side; he did not know who the operator was. He did not recall being the operator at any point. He had the following entry in his memo book related to the incident. 1525: 1 under Officer Harvey, Putnam/Irving.

On November 17, 2007, at approximately 3:25 PM, Sgt. Encarnacion and his team were on a routine patrol when they received via department radio a transmission of a gun run on Irving Avenue and Woodbine Street. The transmission provided a detailed description of the alleged gunman. To Sergeant Encarnacion's recollection, the description was of a male wearing a black-and-red sweater; Sergeant Encarnacion could not recall if the individual's race or any other details were provided. Sergeant Encarnacion could not recall exactly where the team was when they received the transmission, but stated that they were in the vicinity.

Within five minutes of the transmission, the team observed a male § 87(2)(b) who fit the description – he was wearing a red-and-black sweater – walking along Irving Avenue in Brooklyn, near Putnam Avenue, one block from the location specified by the call. § 87(2)(b) was walking “hurriedly” with a “determined” gait. Sergeant Encarnacion stated that, based on his experience as a police officer who has effected numerous gun arrests, § 87(2)(b)'s quick pace was congruent with the way a person carrying an illegal firearm might walk – a fast pace motivated by nervousness. This, coupled with the fact that § 87(2)(b) fit the description of the radio run, raised Sergeant Encarnacion's suspicion that § 87(2)(b) was the suspect.

Sergeant Encarnacion could not recall which officer first observed § 87(2)(b) but believed that he (Sergeant Encarnacion) directed the team to stop § 87(2)(b). The team pulled up next to § 87(2)(b) and Sergeant Encarnacion stated in a clear voice, “Police, stop.” Sergeant Encarnacion did not know if any other officers said anything at that time. To Sergeant Encarnacion's recollection, he was still inside the vehicle when he said this. He did not know if any officers had exited the vehicle at that point. He did not recall if any officers had their guns drawn at that point.

§ 87(2)(b) looked at the officers, then immediately clutched his waistband and fled along Irving, toward Putnam. Sergeant Encarnacion stated that § 87(2)(b)'s action of grabbing his waistband as he ran provided further indication that § 87(2)(b) was armed. Sergeant Encarnacion explained that the waistband is a common location to conceal a firearm, and because the firearm is illegal, it is usually not in a holster. Thus it is common for suspects with guns to grab onto their waistband when running to avoid the gun slipping out of their pants, or to dispose of the firearm, or to draw the firearm. Sergeant Encarnacion cited § 87(2)(b)'s demeanor, proximity to the time and location of the offense, the fact that § 87(2)(b) fit the description, and finally § 87(2)(b)'s actions both in fleeing and grabbing his waistband, as the basis for reasonable suspicion that § 87(2)(b) was the person alleged to possess a gun.

The team, including Sergeant Encarnacion, pursued § 87(2)(b) Sergeant Encarnacion could not recall if he remained in the vehicle or pursued § 87(2)(b) on foot; he also could not recall if any officer pursued § 87(2)(b) on foot, but stated that an officer may have. Sergeant Encarnacion also could not recall if he or any other officer drew or pointed a gun during the pursuit, noting that due to the nature of the suspected crime it is possible that one or more officers did.

§ 87(2)(b) ran to one building and tried “frantically” to get into it. Failing to do so, § 87(2)(b) ran to the next building and tried to open its door. At that point, the officers caught up with § 87(2)(b) Sergeant Encarnacion could not recall which officer reached § 87(2)(b) first, but did not believe it was he. A “violent struggle” ensued. § 87(2)(b) was “obviously flailing his arms,” and “wrestling” with the officers—trying to break free, kicking, and swinging his arms.” Sergeant Encarnacion was physically engaged in the struggle at that point, as were other officers from the team, but Sergeant Encarnacion did not recall which or how many members of the team were involved, or if Officer Harvey was among them. Sergeant Encarnacion described the actions he took as “trying to take § 87(2)(b) to the ground and cuff him.” Sergeant Encarnacion did not recall what specific actions he took, but described it as a quick, chaotic struggle in which it was difficult to determine what was happening. § 87(2)(b) was eventually taken to the ground and handcuffed, but Sergeant Encarnacion could not describe the action further, and did not recall who placed the handcuffs on § 87(2)(b) or whether he himself did so. Sergeant Encarnacion did not know if at any point while § 87(2)(b) was on the ground any officer pushed § 87(2)(b)’s head onto the concrete. Sergeant Encarnacion did not recall if he observed any injuries on § 87(2)(b)

Once § 87(2)(b) was handcuffed, he was placed inside a vehicle. Sergeant Encarnacion could not recall if § 87(2)(b) was placed inside the team’s unmarked patrol car or if a marked unit responded to transport § 87(2)(b) He also could not recall who placed § 87(2)(b) into the back of the vehicle, including whether he himself did so. However, Sergeant Encarnacion stated with certainty that neither he nor any other officer struck § 87(2)(b) in the face or slammed § 87(2)(b)’s face against the back seat while placing § 87(2)(b) into the vehicle.

Sergeant Encarnacion and possibly another officer then conducted a cursory search of the area along which § 87(2)(b) had fled, but did not recover a weapon or any other contraband. Sergeant Encarnacion did not recall whether any conversation took place inside a vehicle between § 87(2)(b) and any officers from the team, including himself – specifically a conversation regarding the whereabouts of the alleged firearm. Sergeant Encarnacion stated, “Most of the time, we don’t ask people that because if they have some sort of contraband, they’re not going to tell you. ... It’s kind of futile and doesn’t serve any purpose.” Sergeant Encarnacion stated that at no point during the incident did he or any other officer use discourteous or offensive language against § 87(2)(b) including calling § 87(2)(b) a “little shit,” “motherfucker,” “faggot,” or “bitch.” Sergeant Encarnacion did not recall if a gun was pointed at § 87(2)(b) at any point during the incident, and again stated that because the officers had reasonable suspicion to believe that he was armed, compounded with the fact that § 87(2)(b) fled from the police and physically resisted, it is possible that this occurred. Sergeant Encarnacion did not recall if any officer pointed a gun at § 87(2)(b) after § 87(2)(b) was placed in handcuffs. Sergeant Encarnacion stated however that neither he nor any other officer ever pointed a gun at § 87(2)(b)’s groin, or made any threat to “blow § 87(2)(b) s] balls off.” Sergeant Encarnacion stated that such an action would never be an appropriate method of interrogation.

Sergeant Encarnacion marked the arrest over the radio and attempted to raise the original complainant of the gun run, but the complainant was uncooperative. Sergeant Encarnacion did not recall if any other unit called over any jobs related to the gun run at any point prior to, during, or after this stop. When the complainant failed to cooperate, and no weapon was found, the team returned to the 83rd Precinct stationhouse to process the arrest. Sergeant Encarnacion stated that § 87(2)(b) was at that point charged with obstruction of governmental administration and resisting arrest, but was not charged with the weapon due to the absence of evidence and a complainant.

At the stationhouse, Sergeant Encarnacion supervised a search of § 87(2)(b) in front of the front desk, after which § 87(2)(b) was placed into a holding cell. To Sergeant Encarnacion’s recollection, he did not interact with or observe § 87(2)(b) at any point after that. Sergeant Encarnacion did not recall if a

strip search of § 87(2)(b) was authorized or conducted. A strip search would have to be authorized by either Sergeant Encarnacion or the desk sergeant. As the team's supervisor, Sergeant Encarnacion would normally be the one to authorize the strip search for one of the team's arrests, but not necessarily. Sergeant Encarnacion noted that because the incident occurred in November, he could not recall any specific factors that would have led him to authorize a strip search. If a strip search was conducted, Sergeant Encarnacion would have noted it in the command log. It might sometimes be additionally noted in his memo book, but it would definitely appear in the command log. Sergeant Encarnacion could not say if he would ever authorize a strip search for a gun. The decision to authorize a strip search is dependent on the specific facts of an arrest, and is made in cases where there is some reason to believe that a weapon or other contraband might be concealed in a place that a normal search would not reveal. Strip searches are conducted in either a private cell or a bathroom in the holding cell area.

Sergeant Encarnacion's service firearm is a "matte" (grey/silver) Smith & Wesson model 5946 9mm semiautomatic. This is the weapon he had at the time of the incident.

From the time Sergeant Encarnacion became the supervisor of the 83rd Precinct Anti-Crime team, in January of 2007, until he was reassigned to Brooklyn North Anti-Crime, on or about December 11, 2007, Officer Harvey, Officer Velez, and Officer Falcone were the regular and exclusive members of his team. Officer James Brunache does not work with the team and, to Sergeant Encarnacion's recollection, was not involved in this incident at any point.

Officer Javier Velez

Officer Javier Velez is a § 87(2)(b)-old, 5'9", 185lb, light-skinned Hispanic male. He was interviewed at the CCRB on March 14, 2008 (Encl. 6). On November 17, 2007, Officer Velez worked from 9:30am until 6:05pm. He was assigned to the 83rd Precinct Anti-Crime team, working with Sergeant Encarnacion, Officer Harvey, and Officer Falcone. The officers were in plainclothes and assigned to an unmarked patrol car. Officer Velez was in the rear driver-side; Officer Harvey was the operator; Sergeant Encarnacion was in the front passenger-side. Officer Velez did not recall Sergeant Encarnacion being in the driver's seat at any point. Officer Velez had no entries related to this incident in his memo book.

At approximately 3:25 PM, the team received a radio transmission of a Hispanic male with a gun on Cornelia Street and Irving Avenue in Brooklyn. A clothing description was provided, but Officer Velez could not recall what was specified. The team was going to back up a sector unit that was responding to the job. A few minutes after the initial radio transmission, the team drove along Irving Avenue, where they observed a young Hispanic male § 87(2)(b) who fit the description "to a tee" walking along Irving Avenue near the intersection of Putnam Avenue, approximately 1 block from the location of the gun run. Officer Velez did not know which officer first observed § 87(2)(b). Officer Harvey drove along side § 87(2)(b) and stopped the car. Officer Velez did not know whose decision it was to approach § 87(2)(b) and did not recall Sergeant Encarnacion directing Officer Harvey to stop the car. § 87(2)(b) was on Officer Velez's side of the car. Officer Velez stepped out of the vehicle and said, "Police. Can we talk to you for a second?" Officer Velez did not know if any other officer made verbal contact or exited the vehicle at that time. Officer Velez might have had his gun drawn at that time, but was not sure; he did not observe any other officer with a gun drawn. Officer Velez noted that in potentially dangerous situations such as this, he usually draws his gun for his safety. Officer Velez was not aware of any other units transmitting a stop related to the original gun run.

As soon as Officer Velez made verbal contact, § 87(2)(b) proceeded to grab the front side of his waistband with one hand and take off running. § 87(2)(b)'s action of grabbing his waistband led Officer Velez to believe § 87(2)(b) was concealing a firearm. Officer Velez immediately began running after § 87(2)(b). Officer Velez did not know if any other officer was involved in the foot pursuit. § 87(2)(b) was not more than ten feet ahead of Officer Velez during the chase, which lasted approximately two blocks. Officer Velez did not know if he pointed his gun at § 87(2)(b) during the chase, but stated that he might have done so. At one point, § 87(2)(b) stopped by a series of garbage cans next to a residential building. § 87(2)(b) flipped open the lid of one of the can and fumbled with his waist as though attempting to dispose of something. Officer Velez did not observe § 87(2)(b) throwing anything.

§ 87(2)(b) appeared to notice that Officer Velez was encroaching and attempted to enter the residence, at which point Officer Velez was able to catch up to § 87(2)(b)

By the time Officer Velez reached § 87(2)(b) the patrol car was directly next to him. Officer Velez grabbed § 87(2)(b) attempting to place handcuffs on him. Officer Velez and § 87(2)(b) then fell to the ground. § 87(2)(b) became resistant and began flailing his arms and throwing kicks and punches. Officer Velez could not recall if § 87(2)(b)'s strikes made contact, but Officer Velez did not receive any injuries. Officer Velez was unable by himself to handcuff § 87(2)(b) and other members of the team assisted – Officer Velez could not say how many or which officers. Officer Velez was not aware of any officer striking § 87(2)(b) during the struggle, or ever slamming or pushing § 87(2)(b)'s head into the concrete. The only action Officer Velez took during the struggle was attempting to control § 87(2)(b)'s arms. Officer Velez and the other officers were giving directions such as, “Stop,” “Let me see your hands,” and, “Put your hands behind your back.” § 87(2)(b) was not responsive to the commands. Officer Velez did not hear any officer using discourteous language during the struggle, or at any other point. Officer Velez could not recall if § 87(2)(b) was making any statements during the struggle. After at least a minute of struggling, Officer Velez was able to place handcuffs on § 87(2)(b). Officer Velez denied that he was upset at § 87(2)(b) for running, and denied pushing § 87(2)(b)'s head into the cement. Officer Velez was primarily focused on securing the alleged gun. He noted that there were a lot of people, including children, on the street at that time, and so his intention was to control § 87(2)(b) as soon as possible to avoid a dangerous situation.

Once handcuffed, § 87(2)(b) was no longer resistant. Officer Velez believed that he was the officer who escorted § 87(2)(b) to the patrol car. Officer Velez denied ever pushing § 87(2)(b) or striking § 87(2)(b) in the face while escorting § 87(2)(b) to the patrol car, pushing § 87(2)(b)'s face against the backseat of the patrol car, or using any force against § 87(2)(b) after § 87(2)(b) was handcuffed; Officer Velez denied observing any other officer doing any such thing. Once § 87(2)(b) was placed in the backseat of the patrol car, Officer Velez briefly searched the immediate area where § 87(2)(b) was handcuffed. Another officer, possibly Officer Falcone, searched the stretch along which § 87(2)(b) had run, including the garbage cans. Officer Velez denied ever having a conversation with § 87(2)(b) inside the patrol car, or observing any other officer(s) doing so. Officer Velez might have asked § 87(2)(b) where the gun was, but denied that there was any point at which all four officers were questioning § 87(2)(b) about the gun's whereabouts. Officer Velez denied ever using, or hearing any other officer use, any of the alleged discourtesies or offensive statements against § 87(2)(b). Officer Velez denied that Sergeant Encarnacion or any other officer ever pointed a gun at § 87(2)(b)'s groin, or threatened to “blow § 87(2)(b)'s balls off,” or made any statements to that effect.

Officer Velez did not recall observing any injuries on § 87(2)(b). At the time of his interview, Officer Velez was presented with the arrest photograph of § 87(2)(b) who Officer Velez verified was the individual he stopped, and which photograph displays an apparent abrasion to § 87(2)(b)'s left cheek. Officer Velez did not know how the injury was incurred, but reiterated that the struggle on the ground lasted over a minute.

Once § 87(2)(b) was taken to the stationhouse, Officer Velez did not see or interact with § 87(2)(b) again. Officer Velez notified § 87(2)(b)'s grandmother and spoke to the family at the stationhouse. Officer Velez did not know if § 87(2)(b) was strip-searched.

Officer Velez has been on the 83rd Precinct Anti-Crime team for approximately one year. At the time of the incident, Sergeant Encarnacion, Officer Harvey, Officer Falcone, and Officer Velez were the only officers on the team. Officer James Brunache was never a member of the team, and, to Officer Velez's knowledge, was not involved in this incident at any point.

Officer William Falcone

Officer William Falcone is a § 87(2)(b)-old, 5'10", 183lb, white male. He was interviewed at the CCRB on March 13, 2008 (Encl. 5). Officer Falcone is currently assigned to Brooklyn North Anti-Crime, but was assigned to the 83rd Precinct on November 17, 2007, working from 9:30 AM until 6:05 PM. He was assigned to Precinct Anti-Crime, working with Sergeant Encarnacion, Officer Harvey, and Officer Velez.

The team was in plainclothes and assigned to an unmarked patrol car. To Officer Falcone's recollection, Officer Harvey was the operator, Sergeant Encarnacion was in the front passenger seat, and Officer Falcone was in the rear passenger seat; Officer Falcone did not recall Sergeant Encarnacion in the driver's seat at any point. Officer Falcone did not have any entries in his memo book related to this incident.

At approximately 3:25 PM on November 17, 2007, Officer Falcone and the team were patrolling in the vicinity of Irving and Putnam Avenues, a residential area that includes a schoolyard. They received over the department radio a report of a gun, including a description of the suspect – to Officer Falcone's recollection, a Hispanic male in a red-and-white hooded sweatshirt. Officer Falcone could not recall the location specified by the gun run, but stated that it was in the vicinity of Irving and Putnam Avenues, somewhere within that block. The Anti-Crime team did not respond to the location for the gun run, and were merely patrolling the area. Officer Falcone was not aware of any other unit responding to the location, or any other units transmitting the stop of a suspect.

Approximately 5-10 minutes after the initial radio transmission, the team observed a male § 87(2)(b) who fit the description "perfectly" – a Hispanic male wearing a red-and-white patterned hooded sweatshirt – on Irving and Putnam Avenues. § 87(2)(b) was only walking at that time. Officer Falcone did not know who first observed § 87(2)(b) or who made the decision to stop, but stated that the entire team "pretty much all saw § 87(2)(b) simultaneously." Officer Harvey pulled up along side § 87(2)(b) and stopped the car. The officers stated, "Police, stop!" Officer Falcone was not certain but stated that Officer Harvey might have been the officer to initiate verbal contact. § 87(2)(b) "had that deer in the headlights look, like, 'Oh shit,'" which indicated to Officer Falcone that § 87(2)(b) might be "dirty" or "up to no good." § 87(2)(b) then began to run. As soon as § 87(2)(b) began to flee, Officer Falcone and Officer Velez exited the vehicle. Officer Falcone denied having a gun drawn at that time or at any point during the incident; he did not know if any other officer drew a gun at that or any other point.

Officer Falcone and Officer Velez proceeded to chase § 87(2)(b) on foot; Officer Harvey and Sergeant Encarnacion pursued in the patrol car. § 87(2)(b) was approximately 50 yards ahead of PO Falcone during the pursuit. As he ran, § 87(2)(b) was holding onto his side, which indicated to PO Falcone that § 87(2)(b) might have a weapon. § 87(2)(b) ran by a series of garbage cans lined by a fence, at which point Officer Falcone observed § 87(2)(b) making a "duck[ing]" motion and move his hands toward the garbage cans, as if throwing something. Officer Falcone was approximately 20 yards behind § 87(2)(b) at that point and did not actually see if anything was thrown. § 87(2)(b) attempted to enter a residence but was unsuccessful and so continued to run up the block. Officer Falcone stopped at the garbage cans to conduct a brief visual search, while Officer Velez continued to pursue § 87(2)(b). Officer Falcone remained at the garbage cans for only a moment, but by the time he looked up again, § 87(2)(b) was on the ground, and Officer Velez, Officer Harvey, and Sergeant Encarnacion were engaged in a physical struggle to place § 87(2)(b) in handcuffs. Officer Falcone assisted as soon as he reached the scene. § 87(2)(b) was flailing his arms, kicking, and trying to escape. Officer Falcone was not aware of any officer striking § 87(2)(b) or slamming § 87(2)(b)'s head in to the concrete, and did not do so himself; he stated that the officers were only attempting to control § 87(2)(b)'s arms. To Officer Falcone's recollection, the officers were not using any discourteous language, and were only making statements such as, "Stop resisting," and, "Give me your hands." Officer Falcone did not know which officer actually placed the handcuffs on § 87(2)(b) but stated that he did not do so.

Once § 87(2)(b) was handcuffed, he was lifted up and placed into the back of the patrol car. § 87(2)(b) was "upset," but Officer Falcone could not recall any statements § 87(2)(b) made at that time. Officer Falcone did not know which officer physically escorted § 87(2)(b) to the car, but again stated that it was not he. Officer Falcone denied that the officer who escorted § 87(2)(b) to the patrol car ever pushed § 87(2)(b) or struck § 87(2)(b) in the face or slammed § 87(2)(b)'s head against the back seat of the car. Officer Falcone denied that any officer, himself included, ever did anything to that effect. Once § 87(2)(b) was inside the vehicle, Officer Falcone and possibly Sergeant Encarnacion conducted a search of the area where § 87(2)(b) had run, including the garbage cans. The search was negative and the officers transported § 87(2)(b) to the stationhouse. Officer Falcone estimated that the officers remained on the scene for a couple of minutes. Officer Falcone did not observe any injuries on § 87(2)(b). At the time of the interview, Officer Falcone was presented with a copy of the arrest photo of § 87(2)(b).

§ 87(2)(b) which displays an apparent abrasion to § 87(2)(b)'s right cheek. Officer Falcone stated that because § 87(2)(b) was fighting with the officers, the injury could have been sustained at any point during that altercation.

Officer Falcone denied questioning § 87(2)(b) at any point about the whereabouts of the gun, or having a conversation with § 87(2)(b) inside the patrol car, and was not aware of any other officer doing any of these things. Officer Falcone stated that there is "no point" in questioning a suspect who has run and resisted arrest, because they will not typically volunteer any information. Officer Falcone denied that any officer used any of the alleged discourteous or offensive language against § 87(2)(b). Officer Falcone denied that Sergeant Encarnacion or any other officer ever placed the barrel of a gun against § 87(2)(b)'s groin, or did anything to that effect, or ever threatened to "blow § 87(2)(b)'s] balls off," or made any statements to that effect.

Once § 87(2)(b) was transported to the stationhouse, § 87(2)(b) was searched in front of the front desk. His pockets were searched, and his shoelaces and belt were removed for safety, and his property was secured. To Officer Falcone's knowledge, § 87(2)(b) was never strip-searched. Officer Falcone has never conducted a strip search for a gun. He stated, however, that he has heard stories of, for example, a prisoner who was secreting a .22-caliber pistol in his buttocks, and so such strip searches have been conducted with positive results.

Officer Falcone was a member of the 83rd Precinct Anti-Crime team for approximately five months, until December of 2007, when he was transferred to the Brooklyn North command. During that time, he, Sergeant Encarnacion, Officer Harvey, and Officer Velez were the exclusive members of the team. Officer Falcone did not recall any other officer, including Officer James Brunache, being present at the arrest location at any point.

Officer Michael Harvey

Officer Michael Harvey is a § 87(2)(b)-old, 5'8", 160lb white male. He resigned from the service on January 20, 2008, and was not interviewed prior to his resignation. However, he prepared a Stop, Question & Frisk report, a complaint report, and an arrest report (Encl. 17a-b and 18a-b). Officer Harvey's memo book had no entries for November 17, 2007, beyond his presence for duty and end of tour.

Stop, Question & Frisk Report

The Stop, Question & Frisk report for § 87(2)(b) indicates that he was suspected of criminal possession of a weapon. He was stopped at the intersection of Irving and Putnam Avenues at 3:25 PM. He was observed for one minute prior to the stop; the stop lasted five minutes. § 87(2)(b) was frisked, searched, and arrested. The report indicates that the officers were not in uniform but identified themselves verbally and with their shields. The circumstances leading to the stop were that § 87(2)(b) fit a description and engaged in furtive movements. Additional factors included a report from a "victim/witness/officer," the fact that the area has a high incidence of the reported offense, § 87(2)(b)'s proximity to the scene of the suspected offense, and the fact that § 87(2)(b) changed direction at the sight of the officers. Physical force was used, including placing hands on § 87(2)(b) placing § 87(2)(b) on the ground, pointing a firearm at § 87(2)(b) and handcuffing § 87(2)(b). The basis for the frisk was furtive movements, refusal to comply with officers' directions, and the fact that a violent crime was suspected.

Complaint Report/Arrest Report

The complaint report for § 87(2)(b) indicates that the incident occurred from 3:15 PM until 3:25 PM, on the northwest corner of Irving and Putnam Avenues. The incident was closed as a uniform arrest for § 87(2)(b). The narrative states that § 87(2)(b) fit the description of a dispute with a firearm. When he was stopped, § 87(2)(b) fled from the officers, refusing to stop. When he was apprehended, § 87(2)(b) resisted by flailing his arms and fighting the police. Sergeant Encarnacion was the supervisor on scene. The arrest report is consistent with the complaint report, with the additional charge of § 87(2)(b).

Note on Interviewing Additional Officers

The memo book of Officer James Brunache indicates that his tour did not start until 6:00 PM on November 17, 2007 (Encl. 21a-b). It also indicates that he and Officer Truitt transported one male to Brooklyn Central Booking at 7:00 PM. It is not clear from where § 87(2)(b) received the name Officer “James Brunache,” but because his tour did not begin until several hours after the incident, he was not interviewed.

§ 87(2)(g), § 87(2)(b)

Medical Records

The doctor’s notes from the § 87(2)(b) Center indicate that § 87(2)(b) was treated on § 87(2)(b) (Encl. 22). The narrative indicates that on November 17, 2007, § 87(2)(b) was walking to a friend’s house when he was accosted by four officers, “roughed up,” put in jail, and arrested. A physical exam noted abrasions and a scab to the right side of his face, abrasions on his wrists, a left knee injury, and cervical stiffness and spasms. X-rays were taken on his left knee and his spine. He was diagnosed with a cervical sprain, abrasion to his right knee and the right side of his face, and an internal “derangement” (possible strain) to his left knee. He was advised to follow up with an MRI for his knee and spine.

Police Records/Documents

Roll Calls

The 83rd Precinct tour 2 roll call indicates that Sergeant Encarnacion was the Anti-Crime supervisor, working from 9:26 AM until 6:10 PM; Officer Harvey, Officer Falcone, and Officer Velez were assigned to the Anti-Crime team, working from 8:00 AM until 4:35 PM (Encl. 27a-h). No vehicle assignment is noted for any officer.

The 83rd Precinct tour 3 roll call indicates that Sergeant Walker was the desk supervisor, working from 2:50 PM until 11:47 PM; Sergeant Zeigler was the patrol supervisor, working the same hours; Officer Ryan Johnson was assigned to the cells from 3:00 PM until 11:23 PM; and Officer Truitt and Officer Brunache were assigned to Conditions in RMP # 2596, working from 6:00pm until 2:35am (Encl. 27a-h).

Sprint Printout/CD

According to the Sprint related to this incident, at 3:13 PM, an anonymous female called 911 to report a fight involving a gun on Cornelia Street, between Knickerbocker and Irving Avenues (Encl. 24a-f). The caller stated that the fight involved a pregnant girl wearing a purple shirt, a blue-and-white scarf, and a doo-rag, and a Hispanic male wearing shorts and a long-sleeve red sweatshirt with black stripes on the sides. The male has a gun. The caller states that the pregnant girl ran toward Irving Avenue, but the male with the gun is still standing at the location, near a white gate with eagles on it, “2 doors from” 319 Cornelia Street. The caller describes the male again, but this time states that his sweatshirt is red-and-grey fleece.

At 3:14 PM, the dispatcher transmits a reported dispute involving a Hispanic male wearing a red-and-grey sweatshirt and a female wearing a purple shirt and a doo-rag, and that the male has a gun. Sectors 83A, 83G, and “83 Sergeant” take the call. At 3:16 PM, the dispatcher calls the female caller back to obtain a more detailed description of the male with the gun. The caller states that he is possibly in his 20s, wearing a black-and-red fleece sweatshirt and shorts, but the caller then states that the police have arrived and the call is disengaged. Also at 3:16 PM, 83A and 83 Sergeant report arriving on scene. At 3:17 PM, “83 XO” reports that no firearm was involved and requests no further units. Seconds later, “83 Portable,” 83A, and 83G all request the location of the stop. However, there is no response from the unit that conducted the stop. At 3:24 PM, another unit – possibly 83I – states that they found the location. At 3:32 PM, the dispatcher requests the status of the gun job and 83A states that it was “90X” (unfounded), adding, “I marked that a while ago.” Also at 3:32 PM, 83G reports a “93Q” (other report) and “93C” (complaint report) but does not indicate for what.

Command Log

The arrest of § 87(2)(b) was entered into the 83rd Precinct command log at 3:30 PM (Encl. 25). The physical condition line was noted as “normal” but crossed-off and marked “inj[ured].” The side column notes that § 87(2)(b) was taken to Central Booking at 7:00 PM by Officer Truitt and Officer Brunache in RMP #2596. There is no note regarding a strip search.

Prisoner Holding Pen Roster

The 83rd Precinct prisoner holding pen roster indicates that § 87(2)(b) was lodged from 4:00 PM until 7:00 PM (Encl. 26). Officer Johnson was the guarding member. There is an illegible set of initials and a time noted as 5:30 PM in the column that states, “Supervisor enter time & initials during periodic visits.”

Convictions History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Notice of Claim

A notice of claim was filed on § 87(2)(b) (Encl. 29a-b). The claimant is noted as § 87(2)(b) infant by his father and natural guardian, § 87(2)(b). The claim is for \$5,000,000 for wrongful arrest and imprisonment, wrist bruises from the handcuffs, pain to the back, neck, and knees from being tackled and assaulted, as well as “severe permanent personal injuries, ... severe mental anguish, emotional distress, loss of Civil Rights and personal freedom and privacy.” The subject officers listed are Officer Brunache and unidentified officers “John Doe ‘1’ through John Doe ‘4’.”

Civilian/Officer CCRB History

This is the first complaint on file for both § 87(2)(b) and § 87(2)(b) (Encl. 7 and 8, respectively). In their respective 3- and 4- year tenures with the NYPD, neither Officer Falcone nor Officer Velez has any substantiated allegations on his CCRB history (Encl. 5 and 6 respectively). In his 10-year tenure with the NYPD, Sergeant Encarnacion has 6 substantiated allegations § 87(4-b) § 87(2)(g) on his CCRB history (Encl. 3a-b). In case #200600234, Sergeant Encarnacion was substantiated for a search of a vehicle and a search of a person, § 87(4-b) § 87(2)(g). The CCRB recommended charges; The NYPD disposed command discipline type A. In case #200614415, Sergeant Encarnacion was substantiated for a stop, pointing a gun, and a frisk. The CCRB recommended charges; the NYPD disposed no disciplinary action because they declined to prosecute the case.

Conclusions and Recommendations

Officer Identification

Sergeant Encarnacion was the team supervisor and recalled making the decision to stop § 87(2)(b) § 87(2)(g). Officer Harvey was identified via photo by § 87(2)(b). § 87(2)(b) stated that the officer identified as Officer Harvey was the only officer he got a good look at and so the only officer he would be able to identify from photos. § 87(2)(g)

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§ 87(2)(b) stated that the officers who stopped him were three white officers and one black officer. There were no black officers on the team. However, there were three light-skinned officers – Officer Harvey, Officer Falcone, and Officer Velez – and one notably darker-skinned officer – Sergeant Encarnacion. Although § 87(2)(b) was unable to identify Sergeant Encarnacion from photos, he lumped Sergeant Encarnacion with the “black” officer photos during his March 11, 2008, photo viewing. § 87(2)(g)

§ 87(2)(g)

Note on the Pleading of Allegations

§ 87(2)(g)

Undisputed Facts

It is undisputed that on November 17, 2007, at 3:13 PM, an anonymous 911 caller reported a dispute on Cornelia Street between Knickerbocker and Irving Avenues involving a Hispanic male with a gun wearing a red-and-grey sweatshirt, that the dispatcher transmitted the job at 3:14 PM, and that at 3:17 PM, the job was marked as unfounded. It is undisputed that § 87(2)(b) was wearing a red-and-grey hooded sweatshirt, and that he was approached by the 83rd Precinct Anti-Crime team on Irving and Putnam Avenues, while walking in the direction of the reported location, at 3:25 PM. It is undisputed that § 87(2)(b) ran from the officers and was tackled to the ground, where he struggled and was eventually handcuffed. § 87(2)(b) sustained abrasions and knee and spine injuries during the incident.

Disputed Facts

§ 87(2)(g)

Assessment of the Evidence

§ 87(2)(g)

” According to *New York Search and Seizure*, § 87(2)(b)'s description of the officers' initial actions constitutes a level three forcible stop (Encl. 1A). Though several of the officers stated that they told § 87(2)(b) to stop, they denied drawing their guns. According to *New York Search and Seizure*, while conducting a level two common law inquiry an officer may lawfully tell a civilian to stop though the civilian is free to reject the encounter (Encl. 1a-1). The drawing of their gun, however, will make the action a level three forcible stop. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Allegation A: Sergeant Zoilo Encarnacion authorized the stop of § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

People v. Bora, 191 A.D.2d 384 (1st Dept. 1993). This by itself entitles an officer to interfere with the suspect “to the extent necessary to gain explanatory information, but short of a forcible seizure.” *Id.*, citing *People v. De Bour*, 40 N.Y.2d 210 (1976). § 87(2)(g)

§ 87(2)(b) by all accounts fled. According to Sgt. Encarnacion, before the officers exited their vehicle, the request was made for § 87(2)(b) to stop. § 87(2)(b) then clutched his waistband and ran. § 87(2)(g)

§ 87(2)(g)

The First Department, upholding the lawfulness of a similar pursuit and detention in *Bora* held:

The police radio transmission which provided detailed information regarding a man with a gun and selling drugs, the officers' quick response time, their observation of the defendant at the specified location, of being the only person wearing clothing matching the description broadcast in the report, together with the defendant's attempt to flee when he saw the officers before they questioned him, his refusal of their request to stop and then his flight, all combined to provide the officers with the reasonable suspicion necessary to pursue the defendant.

§ 87(2)(g)

Allegation B: Officer Michael Harvey pointed his gun at § 87(2)(b)

Allegation C: Officer Michael Harvey spoke obscenely and/or rudely to § 87(2)(b)

Allegation D: Officer Michael Harvey threatened § 87(2)(b) with the use of force.

Allegation E: Officer Michael Harvey used physical force against § 87(2)(b)

Allegation F: Officer Michael Harvey made remarks to § 87(2)(b) based upon sexual orientation.

Allegation L: Officer Michael Harvey strip-searched § 87(2)(b)

§ 87(2)(g)

Allegation G: Officer Javier Velez spoke obscenely and/or rudely to § 87(2)(b)

Allegation H: Officer William Falcone spoke obscenely and/or rudely to § 87(2)(b)

Allegation I: Sergeant Zoilo Encarnacion spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(g)

Allegation J: Sergeant Zoilo Encarnacion pointed his gun at § 87(2)(b)

Allegation K: Sergeant Zoilo Encarnacion threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Allegation M: An officer strip-searched § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: